



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200941034

JUL 14 2009

Uniform Issue List: 408.03-00

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SE.T:EP:RA:T4

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX  
Individual B = XXXXXXXXXXXXXXXXXXXX  
IRA X = XXXXXXXXXXXXXXXXXXXX  
Company S = XXXXXXXXXXXXXXXXXXXX  
Company T = XXXXXXXXXXXXXXXXXXXX  
Bank A = XXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXX  
Amount E = XXXXXXXXXXXXXXXXXXXX  
Amount F = XXXXXXXXXXXXXXXXXXXX  
Date 1 = XXXXXXXXXXXXXXXXXXXX  
Date 2 = XXXXXXXXXXXXXXXXXXXX  
Date 3 = XXXXXXXXXXXXXXXXXXXX  
Date 4 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXX:

This is in response to your ruling request dated January 31, 2008, as supplemented by correspondence dated September 9, 2008, in which you

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request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 48, represents that, pursuant to a general power of attorney, Individual B, Taxpayer A's father, has been managing his financial affairs. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Company T to follow the instructions given by Individual B, which led to Amount F not being deposited in a new IRA account.

Taxpayer A represents further that he maintained IRA X with Bank A until Date 1. On Date 1, Individual B, on Taxpayer A's behalf, closed IRA X, and Amount D was placed in a cashier's account at Bank A. On that same day, Amount E was withdrawn from the cashier's account and used to successfully establish an IRA with Company S. Amount F remained in Bank A's cashier's account while Individual B requested and received documents from Company T to establish a second IRA. On Date 2, Individual B mailed the IRA application to Company T, along with a cashier's check in Amount F payable to Company T Funds, FBO Taxpayer A.

On Date 3, Company T acknowledged receipt of the adoption agreement and check but failed to follow Individual B's instructions and establish the second IRA. Individual B was unaware that the second IRA had not been established until Date 4 when he discovered that Company T had returned the cashier's check. Individual B still holds the expired cashier's check for Amount F and the funds remain in Bank A's cashier's account. Amount F has not been used for any other purpose.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount F from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup>

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day after the day on which the individual received the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with the assertion that Individual B, acting on behalf of Taxpayer A under a general power of attorney, attempted a direct transfer of funds from IRA X to a rollover IRA at Company T by having Bank A issue a cashier's check made payable to Company T FBO Taxpayer A. Individual B did everything

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necessary to complete the rollover and, but for the failure of Company T to open the IRA, there would have been a valid rollover.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount F from IRA X. Taxpayer A is granted a period of 60 days from the date of this ruling to contribute Amount F to a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount F will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

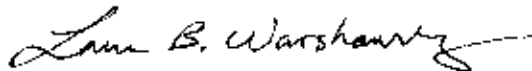
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact XXXXXXXXXX, ID Number XXXXXXXXXXXX, SE:T:EP:RA:T4 at XXXXXXXXXXXX.

Sincerely yours,

  
or Donzell Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted copy of letter ruling  
Notice of Intention to Disclose

cc: